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Supreme Court of the United States

October Term, 1951

No. [redacted] 93

MARGARET TRIMBLE REVEDIN,
Petitioner,

against

DEAN G. ACHESON, Secretary of State of the United States, and UNITED STATES TRUST COMPANY OF NEW YORK,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE SECOND CIRCUIT

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PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE SECOND CIRCUIT

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, MARGARET TRIMBLE REVEDIN, respectfully prays for a writ of certiorari to the Court of Appeals for the Second Circuit to review a judgment, entered February 8, 1952 (rehearing denied March 5, 1952) affirming a decision of the District Court for the Southern District of New York, which held that your petitioner had expatriated herself under the laws of the United States.

Summary Statement of Matters Involved

The instant case is, with one basic exception, on its facts so similar to another case that has recently come before this Court, *Savorgnan* v. *United States,* 338 U. S. 491, 70 S. Ct. 292, 94 L. Ed. 287 (1950), as to be almost its identical twin.

In view of these similarities, the District Court and the Court of Appeals in the instant case felt impelled to reach a result similar to that reached by this Court in the *Savorgnan* case. They did so, however, without reference to the basic distinction between the two cases. They thereby reached conclusions which are contrary to the weight of authority, and thus, it is submitted, unjustly deprived petitioner of her citizenship in the land of her birth.

The similarities between these two cases are striking. Both are actions under 8 U. S. C. A. §903 for a judgment declaring the petitioner to be a citizen of the United States. The petitioner in each case a native born American girl became engaged to a member of the Italian Diplomatic Corps. In each case, the marriage was temporarily blocked (in the instant case for over four years) by the then Italian dictate that no member of its Diplomatic Corps could marry anyone other than an Italian citizen. In each case, for the purpose of getting around this technicality, an Italian decree was issued granting the petitioner Italian citizenship conditional upon her thereafter taking an oath of allegiance to the Italian state. In each case, thereafter, the petitioner accompanied by her fiancé, went to an Italian Consulate in this country (in one case in Chicago, and in the other in New York) and there performed similar acts and signed similar documents in

Italian, none of which were understood by or explained to the petitioner in either case. The document, signed by petitioner in each case recited that she had on that day taken an oath of allegiance to the King of Italy. Neither petitioner had, however, actually taken any such oath, nor had either in signing the document or otherwise any intention of renouncing or in any way endangering her American citizenship. Marriage followed shortly after the trip to the Italian Consulate in each case.

The distinction between these two cases is, however, we believe, fundamental. In the *Savorgnan* case, the petitioner on the trial *conceded* the fact (as foreign law is a fact in our Courts) that what she did at the Italian Consulate was sufficient as a matter of Italian law to constitute the required oath of allegiance to the Italian King, and conceded that she had thereby acquired Italian nationality. The petitioner, in the instant case, however, denied both these facts in her pleadings, and, through the uncontradicted testimony of an expert on Italian law whose qualifications as such were conceded by the government, established that what she did at the Italian Consulate was *not* sufficient as a matter of Italian law to constitute the oath necessary to accord her Italian nationality, but was a nullity, and that she therefore did not thereby acquire such nationality or any other status under the Italian law.

In the *Savorgnan* case, the government urged that Mrs. Savorgnan had lost her citizenship: (1) by foreign naturalization; and (2) by taking an oath of allegiance to a foreign state.[1] As already indicated, petitioner in that

[1] The government in the *Savorgnan* case urged that plaintiff had lost her nationality either under the Citizenship Act of 1907, §2 which provided in part as follows: "§2. That any American citizen shall be deemed to have expatriated himself when he has been naturalized in any foreign state in conformity with its laws or when he has taken an oath of allegiance to any foreign

case conceded the foreign naturalization. She contended, however, that expatriation did not result as she had not intended to expatriate herself. This was the principal, and, outside of certain fringe questions, not material in the instant case, of foreign residence and place of naturalization, the sole question presented to this Court for decision in the *Savorgnan* case. On this point, this Court held:

> "The petitioner's principal contention is that she did not intend to give up her American citizenship, although she applied for and accepted Italian citizenship, and that her intent should prevail. However, the acts upon which the statutes expressly condition the consent of our Government to the expatriation of its citizens are stated objectively. There is no suggestion in the statutory language that the effect of the specified overt acts, when voluntarily done, is conditioned upon the undisclosed intent of the person doing them" (pp. 499-500).

In the instant case, too, the government contended that petitioner had expatriated herself: (1) by foreign naturalization; and (2) by taking an oath of allegiance to a foreign state. The trial of the instant case was held almost a year prior to the decision of this Court in the *Savorgnan* case, and decision was reserved pending the determination of that appeal. Following Your Honors' decision in the *Savorgnan* case, the District Court held against the petitioner in the instant case, placing its decision on the first ground, *viz.*: that petitioner had by her acts acquired foreign naturalization. In reaching that conclusion, the

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state."; or the Nationality Act of 1940, §401, which reads in part as follows: "A person who is a national of the United States, whether by birth or naturalization, shall lose his nationality by: (a) Obtaining naturalization in a foreign state * * * (b) Taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state; * * *." It is the 1907 Act, which, in our view, is applicable in the instant case.

District Court apparently felt that the testimony adverted to above on the Italian law was superseded by Your Honors' decision in the *Savorgnan* case, as it explained its conclusion as follows:

> "Mrs. Savorgnan and plaintiff here adopted and went through the same procedure. If it resulted in Italian citizenship in the one case, it certainly should here" (R., p. 349).

The District Court in so ruling, it is submitted, clearly misread Your Honors' decision in the *Savorgnan* case, for no Court in that case found that the procedure adopted and gone through by the petitioner there resulted in Italian naturalization. Apparently the Court of Appeals in the instant case recognized this error in the decision below as it made no mention of foreign naturalization, but found rather that petitioner had been expatriated on the second ground, viz. that she had taken an oath of allegiance to a foreign state.

Plaintiff contended below that what she did was insufficient to constitute a legally valid oath for the purpose of acquisition of foreign nationality; but, said the Court of Appeals:

> "But the requirement of a legally valid oath for purposes of gaining citizenship is not to be imported into the statutory provisions dealing with its loss. The statutory provision itself is not so qualified" (p. 483).

It is this central holding of the Court of Appeals that we believe should be reviewed by this Court.

Briefly, we believe, in conflict with the expressed views of the Court of Appeals in the instant case, that the legislature in prescribing an oath of allegiance to a foreign state as an act of involuntary expatriation must have

intended that word as expressing a legal rather than a factual concept; that is to say, must have had in mind some act of some legal consequence, and not simply a disrespectful or disloyal word or gesture. Indeed, if it be assumed that the legislature intended the latter, we believe that the Act so construed would clearly be unconstitutional.

Jurisdiction to Review

The jurisdiction of the Court is invoked under Section 1254 (1) of the United States Code, Title 28, Judiciary and Judicial Procedure, and Section 903 of the said Code, Title 8, Aliens and Nationality.

Opinions Below

The Judgment of the United States Court of Appeals for the Second Circuit is dated February 8, 1952, and its opinion is reported in 194 Fed. 2d 482. A petition for rehearing was denied by the said Court on March 5, 1952.

The opinion of the District Court for the Southern District of New York is printed in full in the record (Tr. pp. 109-120).

Questions Presented

(1) Whether the legislature in prescribing oaths of allegiance as acts of involuntary expatriation intended to include anything other than legally valid oaths of allegiance.

(2) If so, whether the legislation, as so construed, is constitutional.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

I

The decision below is in conflict with the decision of another Circuit Court of Appeals on the same matter.

On February 14, 1939, petitioner in the instant case went to the Italian Consulate in New York, and there, in the presence of her fiancé and at the request of an Italian official, held up her hand while certain words in Italian which she did not understand and which were not translated or otherwise explained to her were spoken to her,[2] (Tr. fols. 124-126, 238, 386) and she thereupon signed a document in the Italian language which also was not translated or otherwise explained to her (Tr. fols. 161-162, 237-238, 386). She then left the Italian Consulate. When asked on the trial what she thought she was doing in raising her hand, she answered:

> "I assumed that I was supposed to be taking an oath" (Tr. fol. 134).

And when asked whether she raised her hand intending to take an oath, she replied:

> "I wasn't interested in this procedure in any way, shape or manner" (Tr. fol. 135).

These acts were all performed by plaintiff on the understanding and belief that she was not renouncing or in any way endangering her American citizenship.

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[2] There was no competent evidence presented on the trial as to what was actually said to Mrs. Revedin while her hand was raised. The document she signed thereafter recited (in Italian) that she herself had pronounced the words of an oath to the King of Italy. It is presumably on the basis of that document that the Court below reached the conclusion that the Italian official recited the words of such an oath to her. But that document was clearly not competent evidence of the fact—as its contents were not known to petitioner, it could not be considered an admission by her, and it was clearly hearsay as a statement of the Italian officials.

It was established on the trial by the uncontroverted testimony of Luigi Dionisi, a member of the Italian bar, and by Plaintiff's Exhibits 6 (Tr. p. 87), 7 (Tr. p. 90), and 8 (Tr. p. 91), that these acts under Italian law were a nullity in that: (1) they were not preceded by the warnings required by the Italian law for all oaths (Tr. fols. 194, 202-213); in that (2) the words of the oath were not spoken by the taker—an absolute requirement of Italian law (Tr. fols. 193-202, 206-213); and in that (3) no sworn interpreter was present for the administration of the oath as is also required by the Italian law where the taker does not speak the language (Tr. fols. 213-214, 222-226).

It is also clear that such acts would not have been sufficient under our own law to constitute a legally valid oath for any purpose for which the validity of an oath has ever been passed on by our Courts. For example:

A. Prosecution for perjury:

O'Reilly v. *People of the State of New York*, 86 N. Y. 154 (1881);

People ex rel. Greene v. *Swasey*, 122 Misc. 388, 203 N. Y. S. 22 (Sup. Ct. Albany Co. 1924).

B. Suit for statutory fees for taking "oaths":

Bookman v. *City of New York*, 200 N. Y. 53 (1910).

C. Suit to revoke naturalization as a United States citizen on the ground of an invalid oath of allegiance:

Knauer v. *United States*, 328 U. S. 654, 66 S. Ct. 1304, 90 L. Ed. 1500 (1946);

Baumgartner v. *United States*, 322 U. S. 665, 64 S. Ct. 1202, 88 L. Ed. 1525 (1943);

United States v. *Wurzenberger*, 56 F. Supp. 381 (D. Conn. 1944).

D. Whether a criminal complaint was made under oath:

Spangler v. *District Court of Salt Lake County*, 104 Utah 584, 140 P. 2d 755 (1943).

E. Whether witness's testimony was made under oath so that a judgment could be founded upon it:

Milmoe v. *Meyer*, 15 N. Y. S. 2d 899 (Madison Co. Ct. 1939).

F. Whether a teacher had taken the oath required to validate her contract of employment:

June v. *School District*, 283 Mich. 533, 278 N. W. 676 (1938).

The Court below, however, in spite of the fact that the "oath" here was legally invalid as a step in acquiring foreign nationality, or for that matter for any other purpose, held it sufficient to effect involuntary expatriation.

The Court in so ruling was squarely in conflict with the decision of the Court of Appeals for the District of Columbia in the case of *Gillars* v. *United States*, 182 Fed. 2d 962 (1950). The appellant in that case, Mildred Elizabeth Gillars (better known as "Axis Sally") was convicted in the District Court for treason based on her broadcasts from Berlin to the American forces during World War II. Miss Gillars contended, among other things, that she could not be guilty of treason as she had, on the day following Pearl Harbor and before our official declaration of war, signed and submitted a written oath of allegiance to Germany, which translated stated in effect: "I swear allegiance to Germany"; which counsel argued resulted in Miss Gillars' expatriation under the statute here in-

volved. The trial court held against Miss Gillars' contention refusing even to submit the question to the jury. The Court of Appeals affirmed on the ground that there was no showing that what she did was a legally effectual act. On this point, the Court said:

> "Nevertheless, if what she did cut the bonds of citizenship or raised a question to be decided by the jury her inconsistent claims of citizenship did not preclude her from defending on the basis of its loss if such basis existed. There is no indication, however, that the paper which she said she signed was intended as a renunciation of citizenship; there is no testimony whatever that it was sworn to before anyone authorized to administer an oath or indeed before anyone at all; its exact content is uncertain; if it be treated as an affirmation or declaration rather than an oath it is informal rather than formal in character; and there is no connection whatever shown between it and any regulation or procedure having to do with citizenship or attaching oneself to the Reich or to Hitler. These circumstances preclude attributing to it the character of such an oath or affirmation or other formal declaration as the statute requires to bring about expatriation" (p. 983).[8]

The decision of the Court below is also in conflict with the oft-quoted decision of The Board of Immigration Appeals, *In the Matter of E,* 1 I.&N. Decisions 548 (1943). In that case, E, a native born American, moved to Canada while an infant and later applied for enlistment in the militia. In connection with such application, he executed an "attestation card" bearing an oath to Great Britain. In later exclusion proceedings, he testi-

[8] Compare the language of the Court of Appeals in the instant case in decreeing the involuntary expatriation of a native born citizen as follows: "Plaintiff asserts, and we agree, that American citizenship is an extraordinarily precious thing. But we would suppose that one realizing this would not enter lightly into foreign language oaths and document signing, no matter how 'informal and frivolous,' without seriously seeking information and guidance" (p. 484).

fied that though he signed the card, he did not take the oath. The Board of Immigration Appeals ordered E's admission as a United States citizen, stating:

> "[The Canadian] statute requires that two things be done, that the oath be taken and that it be subscribed to. The appellant did subscribe to the form of this oath, but there is nothing in this record to indicate that he took the oath. To constitute a valid 'oath', there must be in the presence of the person authorized to administer it, an unequivocal act whereby the affiant consciously takes upon himself the obligation of an oath. * * * We feel that the act of the appellant in signing the form of oath is not taking an oath of allegiance within the meaning of section 2 of the Act of March 2, 1907" (p. 550).

II

The decision below is in conflict with the position taken by the government and with this Court's decision in the *Savorgnan* case.

The government in its brief before Your Honors in the *Savorgnan* case did not question the soundness of the decision of The Board of Immigration Appeals *In the Matter of E, supra.* Rather it sought to distinguish the *Savorgnan* case as follows (at p. 48 of its brief):

> "As for the minor claim that certain formalities were lacking in the taking of the oath, the fact is that the document, regular on its face, was duly signed before the witnesses whose signatures appear thereon, and that no formalities were required under Italian law. The Board of Immigration Appeals case which petitioner cites rests on the fact that under Canadian law the oath had to be formally taken, as well as subscribed to in writing, and the American citizen

> there involved subscribed to the oath but never formally took it. In the Matter of E—, 1 I.&N. Decisions 548, 550. There is no showing of a similar Italian requirement, and there was no finding that lack of formality nullified the oath."

But such distinction would not apply to the instant case, for here there was a "showing of a similar Italian requirement" from which a finding "that lack of formality nullified the oath" must necessarily follow.

Nor do we read anything in Your Honors' opinion in the *Savorgnan* case in any way inconsistent with this view expressed by the government. In describing the facts of that case, Your Honors stated, at p. 494:

> "No ceremony of formal administration of the oath accompanied her signature *and apparently none was required.*" (Emphasis ours.)

And no other mention of the "oath" was made in the body of the opinion. In the footnote to the opinion, Your Honors stated:

> "5. The Government further claims that the petitioner's signing of the instrument containing her oath of allegiance to the King of Italy was an oath of allegiance to a foreign state within the meanings of §2 of the Act of 1907, and of §401 (b) of the Act of 1940. We agree."

In the light of the above background, it would seem obvious that in that footnote, all that Your Honors were saying was that an oath of allegiance to a foreign state, however informally taken, if (as admitted in that case) effective under the laws of such foreign state in the acquisition of foreign nationality, would likewise be sufficient under the American law for the purpose of expatriation—a proposition with which, of course, it would be impossible to quarrel.

III

In the alternative, the decision below has decided an important question of federal law which has not been, but should be, settled by this Court.

Assuming we are in error in our reading of Your Honors' opinion in the *Savorgnan* case, then the instant case presents a new and basic question of constitutional law which, because of its importance to all of our citizens, should be resolved by this Court.

As pointed out above, the Court of Appeals in this case has held that what petitioner did constituted an "oath of allegiance" within the meaning of the statute in a factual sense regardless of its legal inconsequence.

While it is well settled that Congress has the power to enact legislation dealing with the expatriation of native born citizens, *MacKenzie* v. *Hare,* 239 U. S. 299, 49 S. Ct. 305, 73 L. Ed. 706 (1915), it is equally well settled that American citizenship is clothed with those same constitutional protections that guard our lesser personal and property rights; that legislation decreeing involuntary expatriation cannot be unreasonable, arbitrary or capricious; and that it must bear a "reasonable and substantial relation to the object sought to be obtained". *Lapides* v. *Clark,* 176 F. 2d 619 (D. C. Cir. 1949), cert. den. 338 U. S. 860.

Acquiring nationality in a foreign state with its resulting dual nationality and consequent divided loyalty would, of course, clearly meet this test of constitutionality. So it may be assumed would the taking of a legally valid and binding oath of allegiance to a foreign state because of the obligations inconsistent with American citizenship that would thereby be incurred. Beyond this, however, we do

not believe the legislature intended to or could constitutionally go.

Cut loose from the test of legal validity, we find ourselves in a large sea of possible but undefined factual situations, in which no one can safely chart a course, and which can best be described as a sea of disrespectful or disloyal words or gestures. It cannot be believed that the legislature intended to decree expatriation for such actions alone. It cannot be believed, if it did so intend, that this Court would uphold such legislation.

Consider an act of the legislature fixing a six months jail sentence as the penalty for such disloyal word or gesture with nothing more. Clearly no court in this land would uphold such an act. See *Schenck* v. *United States,* 249 U. S. 47, 63 L. Ed. 470, 39 S. Ct. 247; *Dennis* v. *United States,* 341 U. S. 494, 95 L. Ed. 1137, 71 S. Ct. 857. See also *Baumgartner* v. *United States, supra.* Consider how much more punitive to deprive one of her American citizenship for life for such an offense.

And, yet, that is exactly what the Court below has done to this petitioner.

It is true, as pointed out by the Court below, that petitioner here may have been somewhat careless of her rights. It may also be true that what petitioner here did could fairly be described as a disrespectful act, although the record is clear that no disrespect or disloyalty was intended. But that is all that can be said against the petitioner. She did not, by such acts, acquire any foreign nationality, or incur any other obligation to any foreign state, or in any other way encumber her loyalty to the land of her birth.

The propriety of imposing such an awful penalty as expatriation upon a native born citizen for such minor and ill defined conduct, it is most respectfully submitted, de-

serves review by this Court not only in the interest of this petitioner, but in the general public interest as well.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of this Court, directed to the Court of Appeals for the Second Circuit, commanding that court to certify and send to this Court a full and complete transcript of the record and of all proceedings in this case, to the end that said cause may be reviewed and determined by this Court; that the judgment of said Court of Appeals entered in said cause be reversed; and that your petitioner be granted such other and further relief as to this Honorable Court may seem just and proper.

Dated, May 28, 1952.

Respectfully submitted,

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